

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
)
v.) 03-CR-30008-MAP
)
JOSE MERCED)

MEMORANDUM AND ORDER REGARDING
MOTION TO VACATE UNDER U.S.C. § 2255
(Dkt. No. 1080)

March 26, 2009

PONSOR, D.J.

On June 7, 2006, the court sentenced Defendant Jose Merced to 180 months imprisonment, consisting of 120 months on drug-related counts and 60 months on a firearms count pursuant to 18 U.S.C. § 924(c). On May 24, 2007, the Court of Appeals affirmed the sentence. Subsequently, the United States Supreme Court in Watson v. United States, 128 S.Ct. 579 (2007), found that an exchange of a firearm for drugs did not, in itself, provide an adequate basis for a conviction under 18 U.S.C. § 924(c).

Based upon Watson, Defendant on November 26, 2008, filed

a Motion to Vacate his sentence pursuant to 18 U.S.C. § 2255 (Dkt. No. 1080). On January 29, 2009, the government filed its response to the motion, conceding "that Watson negates Mr. Merced's Section 924(c) conviction." (Dkt. No. 1092).

Based upon the impact of Watson, and the government's concession, the court hereby ALLOWS Defendant's motion pursuant to § 2255 (Dkt. No. 1080). The clerk is ordered to DISMISS the charge pursuant to 18 U.S.C. § 924(c), and to issue an amended judgment deleting the 60-month on-and-after term and substituting a term of only 120 months for the drug-related offense convictions.

It is So Ordered.


MICHAEL A. PONSOR
United States District Judge